

State of Utah

Title and Escrow Commission Meeting

Meeting Information

Date: **June 11, 2007**

Time: **9:00am**

Place: **State Office Bldg, 4112**

Members

Commission Members

Chairperson, Darwin L. Johnson, *Wasatch* Joyce W. Clark, *Washington*

David M. Lattin, *Salt Lake*

Glen W. Roberts, *Utah*

R. Curt Webb, *Cache*

Department Staff

John E. "Mickey" Braun, Jr.
Ass't Commissioner

Perri Babalis
AG Legal Counsel

Darrel Powell
Dir. Market Conduct

Mark Kleinfield
Admin. Law Judge

Gerri Jones
MC Examiner

Sheila Curtis
MC Examiner

Jilene Whitby
PIO/Recorder

Visitors

David Moore

Paul Newton

Scott Sabey

MINUTES

I. **Welcome and Introductions** / Darwin L. Johnson, Chair

Darwin began the meeting at 9:20a.m. after Commission members returned from a tour of the office.

II. **Adoption of Minutes of Previous Meeting**

Joyce made a **motion** to accept the minutes and Glen seconded it. The vote was unanimous.

III. **Review & Concur with Licensee Report for May**

David **moved** to accept the Licensing Report and Joyce seconded it. The vote was unanimous.

IV. **Number of Cases Open & Closed**

- A new worksheet was introduced entitled "Strictly Marketing Violations R590-153." Cases are closed either with or without action.
- Violation 52953 is a high priority dealing with co habitation. An investigation is underway to determine if a violation has occurred. A letter has been sent to the complainant. Offenders will not be notified that they are being investigated unless we go into their office to collect evidence. It was noted that this was over a year old. Joyce asked how the Commission could help push this along? Mickey noted that it should not be open this long. Curt said the department should be focusing on defalcations and other more serious violations over marketing issues.
- Mickey noted that the department does not receive many marketing violations. Mickey asked Sheila and Gerri to complete the simple violations immediately. Don't set them aside. The department will bring them to the Commission to approve the penalty.
- Curt noted that Instead of seeing what the department is doing, these reports are showing what the department is not doing. Mickey agreed.

V. **Review & Concur with Enforcement Case Report** / Mark Kleinfield

The department has investigated the violation of a trust account in 2005 by Lorelei S. Harward, an agent of Precision Title. The docket number is 2007-048-PC. A hearing was held June 5, 2007. The defendant is not appealing. The Fraud Division is working on criminal action against her. David **moved** to accept the department's recommendation and Joyce seconded it. The vote was 5-0 recommending the penalty.

VI. **Old Business**

- **Update on Rules R592-5 & 6**

- Both rules have been filed and are in their comment period. Since the agreement is not a part of the rule it can be changed as needed. Glen wanted to keep the term "agreement" in the title to avoid confusion with the buyer and seller instructions. Perri made a **motion** to entitle the instructions, "Split Closing Instruction Agreement." Glen seconded it and the vote was unanimous.
- Paul asked if there was a way to adapt this document to facilitate recording documents electronically between both parties. Darwin said that a number of people had expressed concern that faxing or express mailing documents to the other party would slow down the process. Glen said the goal was to create a single fiduciary. Curt suggested adding the wording in paragraph 3, first and second sentence after "delegate," "in writing." This would include faxing. Curt **moved** to accept and Joyce seconded it. The vote was unanimous.
- Rule R592-5, regarding dual licensing, says that anything done under both licenses must be approved on a case-by-case basis. Paul noted that before the 2007 Session ended you couldn't hold a license in another line or field that interfaced with this industry. Curt thought the rule would result in those with dual licenses dropping one to avoid the necessity of getting approval on all transactions. Curt expressed appreciation to ULTA for their work during the legislative session in reducing the effects of this bill.

- **Update Limits in Unfair Inducement Rule R590-153 / Mickey**

The changes to this rule will be filed for rulemaking by the 15th of June.

- **Update - Commission Member Replacement / Mickey**

Gary Goodsell and Canyon Anderson were chosen by the Governor to replace Joyce and Darwin whose terms will end June 30, 2007. If the Legislature approves them June 20, the Governor will send a letter appointing them to the Commission. A new chair will be selected at the July Commission meeting.

- **Proposed "Boilerplate Order" to Streamline Investigations; 3 Types of Violations to go on Boilerplate / Mickey & Gerri**

A draft has not been prepared yet.

VII. New Business

- **Consumer Complaint Process and Comparison & Investigation Process / Mickey**

- The same person is handling consumer complaint violation and investigations. In the health, life and p&c lines one person handles complaints and another the violations.
- The department's priority is working on violations in which consumer have been hurt and making them well.
- Complaints are given to Darrel to assign to Sheila or Gerri.
- The consumer complaint analyst will follow-up on the complaint by contacting the agency or company to get their side of the story, then they report back to the complainant the results and the department's determination as to whether or not their complaint is justified. If a justified complaint the department will take action against the licensee.
- If there is an administrative violation an investigation is opened. If the informant does not want to testify then often the department is unable to take further action unless they can get evidence elsewhere.
- If fraud is discovered then the case is referred to the Fraud Division. Once the case is referred to the Fraud Division then the department has to stop their investigation. When the Fraud case is closed the department can then have access to their evidence and take further action as needed. It is the department's policy to not run cases concurrently with the Fraud Division.
- Mickey noted that the reports to the Commission need to show more of the process.
- Mickey will run a report to compare the number of complaints received regarding title, health, p&c and life.

- Mickey said that if a complaint does not have enough information to go on then a complaint file is not opened. Sometimes the department can solve the complaint with the first call. The Commission suggested it would be helpful to respond to let the complainant know there was not enough evidence to work on it.
- Curt asked that the Commission be made aware of complaints not finalized within six months. The legislation putting the Commission into existence was done to make a change in enforcement. There needs to be some reporting that shows it. David Moore noted that he had reported a serious problem a year and a half ago and the licensee is still in operation. He suggested taking away the license when the first serious problem is discovered rather than investigating them to death.
- Paul asked if evidence could be shared between departments? Mickey said it could.
- Darwin suggested asking those at the next convention how many look at the department's website to see what is happening.
- Paul Thanked Darwin and Joyce for all they had done. He thought this was good interplay between the Commission and the department. Also, he invited the department to put an article in the semiannual ULTA newsletter. Mickey said he would.

- **Enforcement Process** / Mickey

- **Ratio of Investigators vs. Licensee with Real Estate**

Perri reported that Real Estate had 28,000 licensees and 8 examiners. Jilene said the department has 2,258 title licensees and 2 examiners.

- **Are attorneys with real estate experience exempt from experience requirements in 31A-23a-204(1)(a)?** / Curt

An individual emailed Curt asking if the Commission could write a rule exempting attorneys from the experience requirement in 31A-23a-204. Glen said that just because someone is an attorney doesn't mean they can run a title company. The Commission agreed that a rule should not be written to exempt attorneys from this requirement. One of the Commission members will respond to the email.

- **Presentations and Pictures**

VIII. **Other Business** from Committee Members

- **Flip Bulletin** / Glen

Glen asked if the wording changes requested by the Real Estate Division were made to the flip bulletin. Mickey said they had and were on the web.

- **Cash Closings and Splits** / Joyce

Joyce said she was still being asked if cash closings in splits were legal. Mickey said the statute says you cannot do a cash closing on a split. Today he received the AG's opinion on this issue. The department will send a bulletin out to the industry about this.

IX. **Reminder:**

X. **Adjourned:** 11:30a.m.

XI. **Next Meeting:** July 9, 2007, 9a.m. Room 4112, State Office Building.

Next Meeting

9:00 a.m.

July 9, 2007

August 13, 2007

September 10, 2007

October 9, 2007

November 12, 2007

December 10, 2007